

CWP No. 1732 of 2007

05.11.2007 Present: Mr. Neel Kamal Sood, counsel for the petitioner.

Mr. M.S. Chandel, Advocate General with Mr. R.M. Bisht, Deputy Advocate General, for the respondents.

The present writ petition is directed against the award of learned Industrial Tribunal-cum-Labour Court, Shimla, in Reference Petition No. 37 of 2005, decided on 6.9.2007. The petitioner claimed that the termination of his services is in violation of the Industrial Disputes Act. The Labour Court has come to the conclusion that the petitioner had not completed 240 days in the relevant year and as such, was not entitled to the benefit of Section 25-F of the Industrial Disputes Act.

We have gone through the entire record of the case and find that as per the Muster Rolls, the petitioner had completed only 158 days of service in the 12 months prior to the termination of his service. It is contended on behalf of the petitioner that since the petitioner was paid his salary for the months of August and September in the month of November, 1998, it should be presumed that he was working upto November, 1998. The mere fact that the wages of the petitioner were paid after two months does not

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mean that he was in the employment of the respondent/State during the interregnum of two months.

In Government service, no wages can be paid to a worker without his presence being marked on the Muster Rolls or some type of attendance register. In the Muster Rolls, presence of the petitioner is only marked for 158 days. On this basis the learned Tribunal held that the workman had not completed 240 days of service. This is a pure finding of fact, which cannot be interfered with in exercise of our extraordinary writ jurisdiction. We find no merit in the writ petition, which is accordingly dismissed in limine. No costs.

(Deepak Gupta),J.

**November 05, 2007
(BSS)**

(V.K. Ahuja), J.